

**STATE OF MAINE
PUBLIC UTILITIES COMMISSION**

Docket No. 2003-122

**Re: MAINE PUBLIC SERVICE COMPANY,
Application for Waiver of Chapter 304**

STIPULATION

A. Introduction and Procedural History.

On February 1, 2003, Maine Public Service Company ("MPS") filed an Application seeking, *inter alia*, a waiver of Chapter 304 of the Commission's Rules. WPS Energy Service, Inc. and the Office of the Public Advocate ("OPA") filed Petitions to Intervene, and Central Maine Power Company and the Industrial Energy Consumers Group each filed a Petition to Intervene as an interested party. All such petitions were granted without objection from MPS.

In *Maine Public Service Company, Re: Request for Approval of Reorganization*, Docket 98-138, Order dated September 2, 1998 (the "EA Order") the Commission approved MPS's formation of EA and a limited waiver of Chapter 304 of the Commission's Rules. The EA Order was later amended by the Commission's order in *WPS Energy Service, Inc., Complaint Requesting Commission Action to Amend or Alter Commission Order of September 2, 1998 in Docket No. 1998-138 and Determine Whether Maine Public Service Co. and/or Energy Atlantic has Violated the Requirements of the Order of the Provisions of Chapters 301, 304 or 322*, Docket No. 2002-894 (April 29, 2002) (the "WPS Order") by adding additional restrictions upon MPS's ability to share employees with EA.

On February 21, 2003, MPS announced that effective March 1, 2003, EA would withdraw from the Northern Maine market (i.e., the MPS Service Territory) and requested this exemption from the requirements of Chapter 304. On March 26, 2003, in Docket No. 2002- 676, the Commission approved MPS's request to reorganize into a holding company structure, after which MPS and EA would become subsidiaries of Maine & Maritimes Corporation ("MMC"). The request to revisit whether MPS should continue to be subject to Chapter 304 and certain of the restrictions imposed on MPS under the EA Order and WPS Order relating to employee sharing was made in light of EA's decision to exit the MPS Service Territory, the added insulation and separation of activities provided through the holding company structure, and the fact that MPS is a small investor owned utility all of which MPS asserts may merit different treatment under the rule. *See e.g., Commission's Order Provisionally Adopting Rule and Statement of Factual and Policy Basis in Public Utilities Commission, Standards of Conduct for Transmission and Distribution Utilities and Affiliated Competitive Electricity Providers (Chapter 304)*, Docket 98-457 (Order dated December 7, 1998) at 5.

The parties have agreed that the issues in this Docket include whether (i) the Commission should waive all or some of the requirements of Chapter 304 and the conditions set forth in the EA Order or the WPS Order (and Stipulation); and, (ii) if any such conditions remain appropriate, whether they should be imposed at the MPS level or transferred to MMC following MPS's reorganization.

An initial technical conference was held on March 25, 2003 at which the Hearings Examiner established an expedited schedule. Pursuant to this schedule, on April 10, 2003 a technical conference was held during which the Hearings Examiner and the Interveners posed oral data requests to MPS. Following MPS's submission of responses to the oral data requests, a settlement conference was held on April 17, 2003.

The parties have now arrived at a Stipulation, embodied herein, which, if accepted by the Commission, will fully and finally dispose of all matters raised in this Docket. The parties therefore jointly recommend that the Commission accept and adopt this Stipulation as its final disposition of this case. This Stipulation will modify the Docket No. 98-138 Orders with respect to employee and office sharing in accordance with the terms hereof, but in all other respects these Orders shall remain in full force and effect. This Stipulation will supercede and replace (i) the WPS Order in Docket 2000-894 and the Stipulation therein approved by the Commission and (ii) the conditions imposed in the EA Order with respect to the exemption from Chapter 304 therein provided.

B. Stipulation.

The parties hereby agree as follows:

1. EA shall cease marketing in the MPS service territory. Effective as of the close of business on March 1, 2003, EA has or will have discontinued marketing electricity in the MPS service territory. EA will finalize any relevant ongoing discussions with customers on this date, either by entering into an electricity supply agreement or by breaking off sales discussions. EA will honor all existing contracts for the supply of electricity in MPS's service territory that extend past February 28, 2003 (the "Existing Contracts"), but will not enter into any material amendments to any such agreements. The last of EA's existing supply agreements in the MPS territory will expire at the end of February, 2004. EA may seek purchasers for the "Existing Contracts" in the MPS area, but the sale of any Existing Contract shall be subject to the relevant customer consent provisions of the Existing Contract. Accordingly, effective February 28, 2003, MPS shall cease marketing electricity in the MPS service territory, and by no later than February 28, 2004 EA shall have discontinued providing electricity service in that MPS's service territory. EA will retain its Commission-issued license to sell electricity in the State of Maine, and may exercise the privilege to do so in other parts of the State.

2. Approvals and Conditions. The parties recommend that the Commission grant the following specific approvals:

- a. The Commission shall exempt MPS from the prohibition against employee sharing under 35-A M.R.S.A. §3205(3)(L) and Chapter 304(3)(K) of the Commission's Rules, subject to the following conditions, which conditions shall

comprise the only permitted employee sharing between EA and its affiliates MPS and MMC:

(1) Following the expected reorganization of MPS into a holding company structure, the management oversight of EA shall be conducted by senior management of the post reorganization holding company, MMC. No MPS employee shall have direct involvement in the management oversight of EA. MPS currently contemplates that management oversight of EA will primarily involve the following senior executives of MMC: the CEO, the CFO and the Vice President of Unregulated Businesses. In addition, from time to time, these individuals may call upon the General Counsel for MMC, and other senior management of MMC on a limited basis and generally on matters within the expertise and/or responsibility of such MMC senior managers.

(2) No MPS employee shall perform work for or on behalf of EA, except as permitted under the EA Order with respect to the sharing of employees to perform accounting and human resources. In addition, MPS and MMC are permitted to provide information technology ("IT") and related services to EA. The EA Order is amended to require that MPS shall provide all such services to EA pursuant to the Management & Support Services Agreement and Cost Manual approved by the Commission in Docket 2002-676. MPS and EA are prohibited from sharing their respective computer data bases, and shall adopt appropriate policies and procedures to ensure compliance with this restriction in the event that any MPS or MMC employees provide IT related services to EA.

(3) The MMC Vice President of Unregulated Businesses, or his designee, shall have primary management oversight of EA. This person shall have no involvement in MPS "Restricted Activities". The term Restricted Activities used herein shall have the same meaning as is set forth in the WPS Order at Section II, page 4 (attached hereto as Exhibit A). All other employees of MMC, including without limitation the CEO, the CFO and the General Counsel, shall be prohibited from sharing with EA or the MMC Vice President of Unregulated Businesses (or his designee) any information they receive from MPS regarding said Restricted Activities, and consistent with Chapter 304(3)(G) of the Commission's Rules, shall be prohibited from sharing with EA any non-public pricing or other market information received by MPS or MMC from any competitive electricity provider.

(4) MPS, MMC and EA shall be permitted to share building space subject to the following restrictions: (1) in the event that MPS or MMC allow EA to operate in any MPS or MMC facility, MPS shall provide the Commission with thirty (30) days advance notice of doing so, and shall provide therewith a floor plan showing separation between EA employees and MPS employees reasonably adequate to prevent the sharing of non-public information; and (2) EA shall not be allowed to operate in the building housing the MPS "operations center," currently located on the Parkhurst Siding Road in Presque Isle.

- b. EA shall execute, deliver and use of the Managerial and Support Services Agreement and the Cost Manual approved in Docket 2002-676 with respect to services provided by MPS and MMC to EA, which agreement and cost allocation manual shall replace and supercede (i) any existing management and support services agreement between EA and MPS and (ii) the cost allocation formula set forth in the EA Order.
- c. Subject to the foregoing exemptions, MPS shall comply in all other respects with the Standards of Conduct imposed under Chapter 304, and shall modify and refile its Implementation Plan by July 31, 2003 for review by the Commission as to its conformity with the modifications herein described.
- d. The General Counsel of MMC, in such capacity, shall be allowed to provide representation to both MPS and EA, including without limitation the representation of MPS in any Restrictive Activities, and representation of EA in the negotiation, execution or enforcement of specific supply contracts between EA and its retail customers located outside the MPS Service Territory, provided that (i) EA does not market to customers in the MPS Service Territory, and (ii) the General Counsel shall be prohibiting from sharing with EA non-public information received in connection with the Restricted Activities.
- e. Unless otherwise exempted herein, MPS and MMC shall be bound by the provisions of Chapter 304.

3. Prior Notice of Future Marketing In MPS Service Territory.

In the event that EA elects to re-enter and market in the MPS service territory it shall provide the Commission with 120 days advance notice, during which time the Commission shall consider whether to extend, modify or terminate the waivers granted herein (the "EA Notification Proceeding"). If the EA Notification Proceeding cannot be concluded during that time period, the Commission may make such temporary orders as it deems necessary, provided, however, that the waivers granted herein shall remain in place during the EA Notification Proceeding. EA agrees that it shall refrain from marketing in the MPS service territory for a period equal to the longer of:

- (1) 90 days following the date of the Commission's final order in the EA Notification Proceeding;
- (2) 90 days following the filing of a report by MPS indicating that MPS has implemented any conditions set forth the Commission's final order in the EA Notification Proceeding; or,
- (3) 180 days following EA's notice filing to initiate the EA Notification Proceeding.

Provided further that if EA re-enters and markets in the MPS service territory following the EA Notification Proceeding, the restrictions contained in the WPS Order in Docket 2000-894

and the Stipulation therein approved shall apply to MPS and MMC subject to any modifications imposed by the Commission following the EA Notification Proceeding, or unless otherwise superseded or terminated by order of the Commission in the EA Notification Proceeding.

4. Standard Stipulation Provisions.

1. Purpose; Rejection of Portion Constitutes Rejection of Whole. The parties are entering into this Stipulation for the purpose of finally disposing of all issues raised in this Docket. If the Commission does not accept the entire Stipulation without material modification, then the Stipulation shall be null and void, and will not bind the parties in this proceeding.

2. No Precedent. The making of this Stipulation by the parties shall not constitute precedent as to any matter of fact or law, nor, except as expressly provided otherwise herein, shall it foreclose any party from making any contention or exercising any right, including the right of appeal, in any other Commission proceeding or investigation, or in any other trial or action.

3. Examiner's Report. The parties agree to waive the provisions of § 752 (b) of the Commission's Rules of Practice and Procedure, requiring that any Examiner's Report be in writing and that the parties be afforded an opportunity to file exceptions or comments thereon. The parties thereby intend to permit the Advisors either to provide an oral Examiner's Report to the Commission at the deliberative session to be held in this Docket, or, if the Advisors so wish, to provide a written Examiner's Report to the Commission with the parties waiving the right to file exceptions or comments thereto.

IN WITNESS WHEREOF, the parties have caused this Stipulation to be executed and delivered, or have caused their lack of objection to be noted, by their respective attorneys.

MAINE PUBLIC SERVICE COMPANY

Dated:_____

By:_____

OFFICE OF THE PUBLIC ADVOCATE

Dated:_____

By:_____

WPS ENERGY SERVICE, INC.

Dated:_____

By:_____